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12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **OAKLAND DIVISION**

15 SMITHKLINE BEECHAM CORPORATION
 16 d/b/a GLAXOSMITHKLINE,

17 Plaintiff,

18 v.

19 ABBOTT LABORATORIES,

20 Defendant.

Case No. C 07-5702 (CW)

*Related per November 19, 2007 Order to
 Case No. C-04-1511 (CW)*

**GLAXOSMITHKLINE'S AND
 DIRECT PURCHASER PLAINTIFFS'
 ADMINISTRATIVE MOTION TO
 FILE PROWSE DECLARATION,
 DOCUMENTS ASSOCIATED WITH
 SHAEFER AND STOCKINGER
 DECLARATIONS, AND
 PLAINTIFFS' OPPOSITION BRIEFS
 UNDER SEAL (LOCAL RULES 79-5
 AND 7-11)**

Date: October 28, 2010
 Time: 2:00 p.m.
 Courtroom: 2 (4th Floor)
 Judge: Hon. Claudia Wilken

28 *(Caption continued on next page.)*

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SAFEWAY INC., *et al.*,

Plaintiff,

v.

ABBOTT LABORATORIES,

Defendant.

) Case No. C07-5470 (CW)

) Related per November 19, 2007 Order to
) Case No. C04-1511 (CW)

MEIJER, INC. & MEIJER DISTRIBUTION,
INC., *et al.*,

Plaintiff,

v.

ABBOTT LABORATORIES,

Defendant.

) Case No. C07-5985 (CW)
) (Consolidated Cases)

) Related per November 30, 2007 Order to
) Case No. C04-1511 (CW)

RITE AID CORPORATION, *et al.*,

Plaintiff,

v.

ABBOTT LABORATORIES,

Defendant.

) Case No. C07-6120 (CW)

) Related per December 5, 2007 Order to
) Case No. C04-1511 (CW)

NOTICE OF MOTION

PLEASE TAKE NOTICE that plaintiff SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK"), along Direct Purchaser Plaintiffs, hereby move pursuant to Local Rules 79-5 and 7-11 for Administrative Relief to file the following materials, or portions thereof, under seal:

1. Exhibits 1-4, 6-10, 12, 14-21, 28, 30-41, 43-50, 56, 57, 59-62, 64, 69-78, 81-83, 85-101, 103, 106, 107, 110-113, 115-118, and 123 to the Declaration of Trevor V. Stockinger in Support of Plaintiffs' Oppositions to Abbott's Motions for Summary Judgment.

2. Exhibits C-G, I-L, and O to the Declaration of Mark S. Shaefer in Support of Plaintiffs' Oppositions to Abbott's Motions for Summary Judgment.

3. Paragraphs 3 and footnote 2 of the Declaration of Stephen D. Prowse, Ph.D. in Support of Plaintiffs' Oppositions to Abbott's Motions for Summary Judgment.

4. Portions of GSK's Opposition to Abbott's Motion for Summary Judgment.

5. Portions of Direct Purchaser Plaintiffs' Opposition to Abbott's Motion for Summary Judgment.

This motion is brought because some of the materials listed above disclose, in whole or in part, information that has been designated by GSK to be Confidential or Highly Confidential – Attorneys' Eyes Only pursuant to protective orders entered in these related cases. The remaining documents, or portions thereof, lodged under seal have been designated as confidential by Abbott. In accordance with this Court's March 24, 2008 Order, Plaintiffs conferred with Abbott about the confidentiality designations of the documents anticipated to be cited in support of Plaintiffs' opposition briefs. As a result, Abbott de-designated several documents. Declaration of S. Albert Wang in Support of this Administrative Motion to Seal ("Wang Declaration") ¶ 2. The Plaintiffs also de-designated materials, and GSK now brings this motion to seal only that more limited set of materials. *Id.* This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Wang Declaration and accompanying exhibits, and any other material and/or argument related to Plaintiffs' Oppositions to Abbott Laboratories' Motions for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff GSK requests this Court to seal the following materials submitted in support of Plaintiffs' Oppositions to Abbott's Motions for Summary Judgment: Exhibits 2, 4, 6, 7, 12, 36, 38, 43-45, 50, 69, 111, 112, 115, 118 to the Declaration of Trevor V. Stockinger in Support of Plaintiffs' Opposition to Abbott's Motion for Summary Judgment ("Stockinger Declaration"); Exhibits C-G, I-L, and O to the Declaration of Mark S. Shaefer in Support of Plaintiffs' Opposition to Abbott's Motions for Summary Judgment ("Shaefer Declaration"); and paragraphs 3 of the Declaration of Stephen D. Prowse, Ph.D. in Support of Plaintiffs' Oppositions to Abbott's Motions for Summary Judgment ("Prowse Declaration"). In addition, GSK requests this Court to seal portions of GSK's and Direct Purchaser Plaintiffs' Oppositions to Abbott's Motions for Summary Judgment that refer to these materials. Each of these documents contains sensitive and/or proprietary information, the disclosure of which could directly harm GSK's business interests, including those of ViiV Healthcare ("ViiV"), a joint venture company that is 85 percent owned by GSK and through which GSK now develops, markets and sells HIV/AIDS drugs that GSK formerly developed, owned, and marketed directly. GSK's interests in protecting this information greatly outweigh the public's negligible interest in accessing information related to GSK's internal operations, strategies, marketing, and financial performance. Sealing is appropriate under applicable standards and the Court's Local Rule 79-5.

Plaintiffs have also submitted Exhibits 1-3, 8-10, 12, 14-21, 28, 30-35, 37-41, 43, 45-50, 56, 57, 59-62, 64, 69-78, 81-83, 85-101, 103, 106, 107, 110-113, 115, 117, and 123 to the Stockinger Declaration and footnote 2 of the Prowse Declaration under seal because these materials or portions thereof have been designated as confidential by Abbott pursuant to the protective orders in this case and related cases. Plaintiffs do not seek confidential treatment of these materials and have lodged these materials under seal to provide Abbott with the opportunity to establish that these materials should be sealed.¹

¹ GSK seeks to seal a narrower portion of the material contained in Exhibits 2, 12, 38, 43, 45, 50, 69, 111, 112, and 115 than Abbott. GSK's request with regard to these exhibits is specified

1 **II. ARGUMENT**

2 Public "access to judicial records is not absolute." *Kamakana v. City & County of*
 3 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Courts have prevented public access to records to
 4 protect "sources of business information that might harm a litigant's competitive standing." *Nixon*
 5 *v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (citations omitted). With respect to
 6 "dispositive pleadings, including motions for summary judgment and related attachments[.]" a
 7 court may seal a document if there is a "compelling reason" to do so. *Kamakana*, 447 F.3d at
 8 1179 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)); *see also Van Asdale v.*
 9 *Int'l Game Tech.*, No. 3:04-CV-703-RAM, 2010 U.S. Dist. LEXIS 60766 (D. Nev. May 28, 2010)
 10 (granting defendant's motion to maintain seal on numerous documents, including plaintiff's
 11 opposition to defendant's motion for summary judgment). "Compelling reasons" include "the use
 12 of records to gratify private spite, promote public scandal, circulate libelous statements, or release
 13 trade secrets." *Kamakana*, 447 F.3d at 1179 (citations omitted).

14 Local Rule 79-5 permits this court to issue a sealing order "upon a request that establishes
 15 that the document, or portions thereof, is privileged or protectable as a trade secret or otherwise
 16 entitled to protection under the law" N.D. Cal. Local Rule 79-5(a).

17 Here, the documents and portions thereof that GSK seeks to have sealed contain
 18 information, including trade secrets and proprietary information, the public release of which could
 19 financially harm GSK. GSK's competitors could use the information against GSK to GSK's
 20 detriment. In addition, GSK's data vendors could be harmed by the public release of their product.
 21 *See Van Asdale*, 2010 U.S. Dist. LEXIS 60766. Protecting the release of trade secrets and
 22 proprietary information, and avoiding the resulting financial harm, are compelling reasons to seal,
 23 and GSK has narrowly tailored its requests with these interests in mind. Thus, this Motion for
 24 Administrative Relief seeking the sealing of documents, or marked portions thereof, should be
 25 granted.

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 28 with highlighting in the exhibits to the Wang Declaration, filed concurrently under seal with this Motion.

1 The following sections provide details for groups of documents, or portions thereof, which
 2 make up GSK's request, demonstrating why these selections satisfy the legal standard at issue and
 3 should be sealed.

4 **A. Stockinger Declaration**

5 **1. GSK's License Agreements and Related Documents**

6 Exhibits 2, 4, 6, 7, and 12 to the Stockinger Declaration, and Exhibits C, D, and E of the
 7 Shaefer Declaration, are GSK license agreements or documents that discuss or reveal the terms
 8 and/or negotiations of those agreements. *See* Declaration of S. Albert Wang ("Wang
 9 Declaration") ¶¶ 6-10, 22-24. These agreements are kept confidential, and the documents that
 10 reference them contain sensitive information, including information that could be used against
 11 GSK in the future if publicly disclosed. This is particularly true because much of the licensing
 12 documentation and discussion reveals GSK's general strategic approach and negotiation tactics,
 13 and often the financial terms. *Id.* The licenses themselves contain confidentiality provisions.
 14 Preventing harm to GSK's business is a compelling reason to keep these exhibits, or the denoted
 15 portions thereof, confidential and nonpublic.

16 **2. Confidential GSK Forecasts and Market Research**

17 Exhibits 36 and 115 to the Stockinger Declaration contain excerpts of depositions in which
 18 there is testimony about confidential, internal GSK forecasts for Lexiva. *Id.* ¶¶ 11, 20. Exhibit G
 19 to the Shaefer Declaration contains forecasting information as well as market research, all from a
 20 third party research firm hired by GSK. *Id.* ¶ 26. Paragraph 3 of the Prowse Declaration relies
 21 upon proprietary market data provided to GSK by third-party vendors. *Id.* ¶ 32. Public disclosure
 22 could impair GSK's ability to compete in certain markets in the future, as this material relating to
 23 GSK's forecasts reveal not just GSK's internal business planning but also its strategies and
 24 approaches. Not only are GSK's interests impacted, but so are those of GSK's third party research
 25 vendor. In order to release information from its third party research vendors in this litigation,
 26 GSK has agreed to make efforts to protect its interests. These concerns are compelling reasons to
 27 maintain the confidentiality of these exhibits to the Stockinger and Shaefer Declarations.

3. Expert Reports and Excerpts

Exhibits 38, 43-45, 50, 69, 111, and 112 to the Stockinger Declaration are expert reports or excerpts of expert reports. *Id.* ¶¶ 12-19. These materials discuss and analyze confidential forecasts, projections, pricing issues, costs, licensing, and marketing strategies. *Id.* In order to properly analyze this case, the experts must often quote from or relate key strategy documents of GSK's, revealing information that is highly sensitive and could be used against GSK. Given the level with which the experts in this case must dive into the strategies and financial data of GSK, the protection of GSK's, and ViiV's, business interests serves as a compelling reason to keep these exhibits, and denoted parts thereof, under seal.

4. Confidential Business and Strategy Documents

Exhibit 118 to the Stockinger Declaration, and exhibits F, I, J, K, L, and O to the Shaefer Declaration contain information about GSK's business and strategy, including marketing plans and pricing issues. *Id.* ¶¶ 21, 25, 27-31. These documents include major launch planning documents and presentations, as well as collections of research on perceptions of Lexiva and the protease inhibitor market. This category also includes internal analysis carried out by GSK on the implications of the Norvir price hike in relation to public payers. These types of internal business deliberation and planning documents reveal information that is vital to GSK's, and ViiV's, competitive standing. Avoiding the damage that would come from disclosing these strategic documents provides this Court compelling reasons to keep the documents confidential.

B. GSK's Opposition to Abbott's Motion for Summary Judgment and Direct Purchaser Plaintiffs' Opposition to Abbott's Motion for Summary Judgment

GSK's Opposition to Abbott's Motion for Summary Judgment and Direct Purchaser Plaintiffs' Motion for Summary Judgment disclose information contained in the confidential documents discussed above. For the same reasons that those materials should be sealed, references to that information should be sealed as well.

1 **III. CONCLUSION**

2 For the foregoing reasons, this Court should grant Plaintiffs' motion for administrative
3 relief and seal the requested documents or portions thereof.

4
5 Dated: September 9, 2010

Respectfully submitted,

6 IRELL & MANELLA LLP

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8 Alexander F. Wiles

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Pursuant to General Order No. 45, Section X, I attest under penalty of perjury that
concurrence in the filing of this document has been obtained from the above signatories.

Dated: September 9, 2010

By: s/ Trevor Stockinger
Trevor V. Stockinger
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Attorneys for GlaxoSmithKline